IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1818 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABUSING SUMERSING SODHA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 1818 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, petitioner who has been detained by the District Magistrate, Banaskantha at Palanpur in exercise of powers conferred upon him under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter) vide order dated

January 16, 2001, has challenged the order of his detention and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. From the averments made in the petition as well as the order of detention, it is manifest that the grounds of detention mentioned in the said order are that the petitioner is a prohibition bootlegger within the meaning of section 2 (b) of the Act and he is carrying on the alleged anti social activities pertaining to the illegal liquor business within the jurisdiction of Tharad Police Station, District Banaskantha. The detaining authority, therefore, relied upon the case registered against the petitioner vide CR No. 5147 of 2000 at Tharad Police Station for the offences under the Bombay Prohibition Act. It is contended by the petitioner that the detaining authority has relied upon the statements of two witnesses which were recorded on January 8, 2001 and which were verified by the Deputy Superintendent of Police, Banaskantha District at Palanpur, but has not examined the same himself. Therefore, the detaining authority has not applied his mind properly before passing the impugned order of detention and, therefore, the said order of detention is vitiated as the District Magistrate has not recorded the subjective satisfaction before passing the impugned order.

3. I have heard Mr. Anil Dave, learned advocate for the petitioner - detenu and Mr. K.T. Dave, learned AGP for the respondents. I have also perused the averments made in the petition as well as the impugned order of detention and the statements of the witnesses recorded by the investigating officer which were verified by the Deputy Superintendent of Police and were annexed to the petition. There is no manner of doubt that against the petitioner one case for commission of the offences under the Bombay Prohibition Act has been registered with Tharad Police Station and the investigating officer has recorded statements of two witnesses on January 8, 2001. The said statements were verified by the Deputy Superintendent of Police, Palanpur, on January 10, 2001 whereas the order of detention was passed on January 16, 2001. The learned AGP has not been able to point out as to whether before recording the impugned order of detention the District Magistrate has verified the said statements. In view of the above fact situation, I am of the opinion that before recording the impugned order of detention by the District Magistrate, it can be said that the subjective satisfaction was not recorded by the

detaining authority and he has merely relied upon the statements of two witnesses which were verified by the Deputy Superintendent of Police.

4. Similar question arose before this Court in the case of Bai Amina v. State of Gujarat, 22 GLR 1186. In the said case the statements of anonymous witnesses were not examined by the detaining authority himself and, therefore, it was held that the subjective satisfaction recorded by the detaining authority got vitiated and the order of detention was quashed and set aide. The ratio laid down by this Court in the said judgment was followed by Division Bench of this Court in Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659.

5. Applying the aforesaid principles to the facts of the present case it can be said that in the instant case also statements of two witnesses which were recorded by the investigating officer during the course of investigation of the offence registered against the petitioner under the Bombay Prohibition Act were verified by the Deputy Superintendent of Police on January 10, 2001 and without examining the said statements by the detaining authority himself, he has passed the impugned order of detention dated January 16, 2001.

6. Seen in the above context, it is clear that the detaining authority has not properly recorded the subjective satisfaction and has not applied mind before recording the impugned order of detention and, therefore, the said order of detention is vitiated and deserves to be quashed and set aside.

7. For the foregoing reasons, the petition succeeds and it is accordingly allowed. The order of detention dated January 16, 2001 passed by the District Magistrate, Banaskantha at Palanpur is quashed and set aide and the petitioner - detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

23.8.2001. (A.M. Kapadia, J.)

(karan)